

No. 82-1651

Office - Supreme Court, U.S.
FILED

MAY 9 1983

ALEXANDER L. STEVAS,
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

**CRISPUS NIX, Warden of the
Iowa State Penitentiary,**

Petitioner,

vs.

ROBERT ANTHONY WILLIAMS,

Respondent.

**On Petition For A Writ Of Certiorari To The
United States Court Of Appeals For The Eighth Circuit**

BRIEF OF AMICI CURIAE

State of Illinois, Joined by the States of Alabama, Alaska, Arizona, Colorado, Delaware, Florida, Georgia, Hawaii, Idaho, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Hampshire, North Carolina, North Dakota, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming and Puerto Rico.

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QUESTION PRESENTED

Whether the doctrine of *Stone v. Powell*, precluding federal habeas corpus review of certain state convictions, should be extended to a sixth amendment case where the alleged constitutional violation did not impair the fundamental fairness of the judicial proceeding which resulted in Respondent's conviction.

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State of Illinois, Joined by the States of Alabama, Alaska, Arizona, Colorado, Delaware, Florida, Georgia, Hawaii, Idaho, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Hampshire, North Carolina, North Dakota, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming and Puerto Rico.

INTEREST OF AMICI CURIAE

Pursuant to United States Supreme Court Rule 36.4 the above-listed states, through their Attorneys General, offer this brief in support of the Petition for Writ of

Certiorari filed by the State of Iowa in *Nix v. Williams*, No. 82-1651 (April 7, 1983).

This case presents issues of great importance to the criminal justice system of every state. This matter involves a belated collateral federal attack upon a conviction which resulted from a full and fair state court adjudication. The litigation has been particularly burdensome because it has been virtually constant since the commission of the crime 15 years ago.

Respondent is a state prisoner who petitioned successfully for a federal writ of habeas corpus. His collateral attack challenges the conviction resulting from his second trial for the crime. This Court affirmed a grant of writ of habeas corpus which invalidated the conviction resulting from Respondent's first trial. *Brewer v. Williams*, 460 U.S. 387 (1977). In both the first and second collateral attacks, Respondent has argued that his sixth and fourteenth amendment right to counsel was violated by the admission of evidence of the murder victim's body at trial. In both instances federal courts have found that the Iowa courts erred in allowing the introduction of the evidence. Thus, this case raises issues central to the administration of criminal justice including: the appropriate scope of federal review and supervision of state criminal proceedings; the relevancy of guilt in determining the constitutionality of a conviction; the need for swift punishment and speedy restoration of criminals to a useful role in society; proper use of limited state resources allocated to criminal process; and maintenance of public confidence in the judicial system.

These issues affect the ability of every state to maintain law and order and to administer effective criminal justice programs. Thus, Amici possess a strong interest in speaking to the issues presented to the Court by this case.

STATEMENT

The Amici adopt and incorporate by reference the statement of facts set forth in Iowa's Petition for Writ of Certiorari.

REASON FOR GRANTING THE WRIT

THE DECISION BELOW RAISES THE RECURRING QUESTION OF THE APPROPRIATE SCOPE OF THE DOCTRINE OF *STONE v. POWELL* WHICH LIMITS FEDERAL COLLATERAL REVIEW OF STATE COURT CONVICTIONS.

This case began with the brutal sexual assault and murder of a 10-year-old girl almost 15 years ago. Within 2 years of the murder, Respondent was tried and convicted of the crime and his conviction affirmed by the Iowa Supreme Court. A successful federal collateral attack, culminating in review by this Court, resulted in a second trial, conviction, and state supreme court affirmation. Respondent's second collateral federal attack has been litigated in the district and circuit courts and now comes before this Court again. The circuit court held that the introduction of evidence regarding the victim's body at the second trial violated Respondent's sixth and fourteenth amendment right to counsel because the police discovered the location of the body by talking with Respondent outside the presence of his lawyer.

In *Stone v. Powell*, 42 U.S. 465 (1976), this Court held that when a state provides an opportunity for a full and fair litigation of a fourth amendment claim, a state

prisoner may not be granted federal habeas corpus relief on the ground that evidence obtained through an unconstitutional search and seizure was introduced at his trial. This Court reasoned that in the context of federal collateral review of state convictions, the contribution of the exclusionary rule to the effectuation of the fourth amendment is minimal as compared to the substantial societal costs of applying the rule. The rationale of *Stone v. Powell* justifies preclusion of collateral review of this matter.

A.

The State Provided Respondent With An Opportunity For Full and Fair Adjudication Of His Sixth Amendment Claim.

The Iowa courts reviewed Respondent's sixth amendment claim and concluded that the evidence regarding the victim's body was admissible under the standards enunciated by this Court. The decision of the Iowa Supreme Court was appealable to this Court through direct review upon a petition for writ of certiorari. The degree of direct review afforded Respondent sufficiently protected his rights under the sixth amendment.

The alleged constitutional violation occurred at the time of arrest and prior to indictment and the commencement of trial. Respondent does not challenge the constitutional integrity of the truthfinding process which resulted in his conviction in this proceeding. Rather, Respondent contends that his sixth amendment right was violated by police conduct at the time of arrest and immediately thereafter. Respondent maintains that this alleged violation allows him a second bite at the apple, requiring federal collateral review to determine whether highly probative physical evidence discovered through the alleged violation should have been excluded at trial.

In *Rose v. Mitchell*, 443 U.S. 545 (1978), this Court explained the purpose underlying the limitation on collateral review imposed by *Stone v. Powell*. *Rose* involved allegations that the selection of the foreman of the Tennessee grand jury that indicted the defendants violated the fourteenth amendment. The State argued that the doctrine of *Stone v. Powell* precluded collateral review of the issue. This Court rejected that argument, stating that in *Stone*, "the Court made it clear that it was confining its ruling to cases involving the judicially created exclusionary rule, which had minimal utility when applied in a habeas corpus proceeding." 443 U.S. at 560. The Court further reasoned:

. . . that *Stone* rested to an extent on the Court's feeling that state courts were as capable of adjudicating Fourth Amendment claims as were federal courts. But where the allegation is that the state judiciary itself engages in discrimination in violation of the Fourteenth Amendment, there is a need to preserve independent federal habeas review of the allegation that federal rights have been transgressed.

Id. at 563.

Thus, if a state court is capable of adjudicating a fourth amendment claim as well as a federal court, it is capable also of adjudicating a fifth or sixth amendment claim as well as a federal court. A fifth or sixth amendment claim merits federal collateral review only when the alleged violation affects the integrity of the proceeding resulting in conviction.¹ Accordingly, an allegation

¹ The Court in *Rose* stated that an allegation of discrimination in the selection of a grand jury foreman, "strikes at the fundamental values of our judicial system" and thus, impairs the integrity of the truthfinding process. *Rose* at 557. In their

(Footnote continued on following page)

such as gross incompetency of counsel might necessitate collateral review. Under the reasoning of *Stone*, however, such review should not be required to assess the constitutional validity of the admission of evidence discovered through statements made outside the presence of counsel at the time of arrest.

This analysis comports with the distinctions drawn by this Court in determining whether a decision should be applied retroactively. See *Mackey v. United States*, 401 U.S. 667, 688 (1970) (Harlan, J. concurring); *Johnson v. New Jersey*, 384 U.S. 719 (1966). The focus is on the effect of the constitutional violation on the truthfinding process. Thus, while the decision defining the right to counsel in *Gideon v. Wainwright*, 472 U.S. 335 (1963), is given retroactive effect in cases under direct and collateral review, the decision defining the right of the accused to be warned of their rights in *Miranda v. Arizona*, 384 U.S. 478 (1966), is not applicable retroactively. In determining not to give *Miranda* retroactive effect, the Court reasoned that while, "*Miranda* guard[s] against the possibility of unreliable statements in every instance of in-custody interrogation, [it] encompass[es] situations in which the danger is not necessarily as great as when the accused is subjected to overt

¹ *continued*

dissents, however, Justices Stewart and Powell, joined by Justice Rehnquist, disagreed with this analysis. The dissenters argued that despite the alleged discrimination in the grand jury selection, the defendant was tried and convicted before an impartial jury and therefore, federal habeas review was unnecessary. Whatever the dispute concerning the effect of alleged discrimination in the grand jury process, there can be no question that the allegedly unconstitutional police conduct in this case did not impair the fairness of the truthfinding process. The alleged violation occurred following the arrest when police questioned the defendant outside the presence of counsel.

and obvious coercion." *Johnson v. New Jersey*, 384 U.S. at 730. Accordingly, the Court concluded that the availability of other safeguards to protect the integrity of the truthfinding process at trial eliminated the necessity for applying *Miranda* retroactively. The Court, therefore, focused on the fundamental fairness of the truthfinding process.

Similarly, in determining whether to extend *Stone v. Powell*, to fifth and sixth amendment cases, the logical focus of the analysis is on the effect of the alleged violation on the truthfinding process. The fundamental fairness of the truthfinding process is not impaired by the admission of evidence discovered through statements made outside the presence of counsel at the time of arrest. Thus, *Stone v. Powell* should be extended to preclude collateral review in a case such as this where the alleged constitutional violation does not render the truthfinding process fundamentally unfair.

B.

The Societal Costs Outweigh The Constitutional Interests Advanced By A Collateral Federal Review Of An Alleged Constitutional Violation That Does Not Impair The Fundamental Fairness Of The State Judicial Proceeding.

The system of dual review allowed in this case permits a defendant to retry his case in federal court if the outcome in state court does not satisfy him. A defendant may then contest an adverse federal decision through another round of federal review. As Justice Powell noted in *Rose v. Mitchell*:

Not only may a state claimant have a 'rerun' of his conviction in the federal courts, but also there is no limit to the number of habeas corpus petitions such a claimant may file. The jailhouse lawyers in the prisons of this country conduct a flourishing

business in repetitive habeas corpus petitions. It is not unusual to see, at this Court, a score or more petitions filed over a period of years by the same claimant.

443 U.S. at 582 (Powell, J. dissenting).

This case comes before this Court a second time after 15 years in the lower trial and appellate courts. Such lengthy and repetitive litigation imposes great costs. Finality in the criminal process is crucial to the concept of justice in an ordered society. As Justice Harlan stated in *Mackey v. United States*:

Both the individual criminal defendant and society have an interest in insuring that there will at some point be the certainty that comes with an end to litigation, and that attention will ultimately be focused not on whether a conviction was free from error but rather on whether the prisoner can be restored to a useful place in the community.

401 U.S. 667, 690 (1970) (Harlan, J. concurring) *quoting*, *Sanders v. United States*, 373 U.S. 14, 24 (1968) (Harlan, J. dissenting). *See also*, Friendly, *Is Innocence Irrelevant? Collateral Attack on Criminal Judgments*, 38 U.Chi.L.R. 142 (1970); Bator, *Finality in Criminal Law and Federal Habeas Corpus for State Prisoners*, 76 Harv.L.Rev. 441 (1963).

Delay in the criminal process undermines the deterrent effect of criminal law which rests on the premise that criminal behavior will result in swift and sure punishment. Protracted criminal litigation diminishes public confidence in the judicial process and discourages citizens from coming forth to assist law enforcement efforts. Further, repetitive litigation of the same issues in the same case amounts to an unnecessary drain on the

limited resources available for criminal prosecution and public defense.²

Moreover, the circuit court did not further the purpose of the exclusionary rule in holding that the evidence relating to the murder victim's body was constitutionally inadmissible. "[T]he policies behind the exclusionary rule are not absolute." *Stone v. Powell*, 428 U.S. at 488. The rule permits the exclusion of unlawfully obtained evidence, which is otherwise reliable and probative, as a deterrence against unconstitutional police conduct. *United States v. Janis*, 428 U.S. 433, 443-47 (1976); *United States v. Calandra*, 414 U.S. 338, 347-48 (1974). "As with any remedial device, the application of the rule has been restricted to those areas where its remedial objectives are thought most efficaciously served." *Brewer v. Williams*, 430 U.S. 387, 422 (Burger, C.J. dissenting) quoting, *United States v. Calandra*, 430 U.S. at 348.

The sixth amendment ensures the fundamental fairness of a criminal trial and limits the risk of convicting the innocent. *Gideon v. Wainwright*, 372 U.S. 335 (1963); *Powell v. Alabama*, 372 U.S. 45 (1932). Assuming *arguendo* a sixth amendment violation occurred, exclusion of the evidence relating to the murder victim's body would not deter future violations. The allegedly unconstitutional police conduct took place immediately after arrest and in no way affected the integrity of Respondent's trial. Further, Respondent's guilt was not in question. See, *Brewer v. Williams*, 430 U.S. at 428 (Burger,

² Prisoner petitions impose a tremendous burden on the overcrowded federal docket. In 1980, 23,607 prisoner petitions were filed in United States District Courts. See, *Annual Report of the Director of the Administrative Office of the United States Courts*, 370 (1981).

C.J. dissenting); 437 (White, J. dissenting); 441 (Blackmun, J. dissenting). "The evidence of Williams' guilt was overwhelming." *Williams v. Brewer*, 509 F.2d 227, 237 (8th Cir. 1975) (Webster, J. dissenting). Thus, application of the exclusionary rule in this case produces no deterrent effect and saddles society with the cost of allowing a guilty man to go free.

Broad federal collateral review of state court convictions raises questions concerning the appropriate scope of federal supervisory authority over state judicial systems. See, Reitz, *Federal Habeas Corpus: Impact of an Abortive State Proceeding*, 74 Harv.L.Rev. 1315, 1330 (1961). The overextension of federal habeas corpus ignores that the administration of criminal justice is primarily the business of the states. See, *Younger v. Harris*, 401 U.S. 37 (1971); *Perez v. Ledesma*, 401 U.S. 82 (1971). "The review by a single federal district court judge of the considered judgment of a state trial court, an intermediate appellate court, and the highest court of the State, necessarily denigrates those institutions." *Rose v. Mitchell*, 443 U.S. at 585 (Powell, J. dissenting). Thus, the extended use of federal habeas corpus conflicts with traditional principles of federalism.

The Iowa courts reviewed and decided Respondent's constitutional claim. With respect to the excluded evidence, Respondent alleged no constitutional defect in the truthfinding process which resulted in his conviction. Thus, this case did not merit federal collateral review. The burdens on society outweigh any benefit in allowing cases such as this to continue ad infinitum. "If law, criminal or otherwise, is worth having and enforcing, it must at some time provide a definitive answer to the questions litigants present or else it never provides an

answer at all." *Mackey v. United States*, 401 U.S. at 691 (Harlan, J. concurring.).

The conflict between the societal interests in imprisonment of the guilty and finality in criminal proceedings, and the rights of criminal defendants to have federal review of full and fair state court adjudications, merits this Court's consideration.

CONCLUSION

For the foregoing reasons, a writ of certiorari should issue to review the judgment and opinion of the Court of Appeals for the Eighth Circuit.

Respectfully submitted,

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